



EMPLOYMENT (STABILIZATION OF REMUNERATION) ACT 1983

No. 2 of 1983

TABLE OF PROVISIONS

- 1. Short title.
2. Commencement.
3. Interpretation.
4. Application.
5. Act to bind Crown.
6. Power of Governor to make orders for purposes of this Act.
7. Power to extend orders under section 6 so as to apply to employers.
8. Application of orders under section 6 to existing contracts of employment, &c.
9. Power of designated Minister to prepare code for guidance of remuneration-fixing authority.
10. Offences generally.
11. Expiry of Act.

AN ACT to provide for powers of control over the remuneration payable to certain employees, the hours of work of those employees, certain allowances payable to those employees, to enable the functions of certain remuneration-fixing authorities to be regulated, and to provide for related matters.

[Royal Assent 16 February 1983]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the Employment (Stabilization of Remuneration) Act 1983. Short title.

Commence-
ment.

2—This Act shall be deemed to have commenced on 27th January 1983.

Interpretation.

3—(1) Except in so far as the context or subject-matter otherwise indicates or requires—

“ class ”, when used in relation to employees, includes a grade, a division, and an occupational group;

“ contract ” includes an agreement in the nature of a contract;

“ functions ” includes duties and powers;

“ increase ” includes “ improve ” when applicable to a benefit of a material kind;

“ pay ” includes “ confer ” or “ render ” when applicable to a benefit of a material kind;

“ prescribed allowance ” means—

(a) any expenses of office allowance; and

(b) any tool allowance, clothing allowance, proficiency allowance, or other allowance in the nature of remuneration,

but does not include any travelling, kilometrage, lodging, or meal allowance or expense;

“ remuneration ” includes—

(a) salaries and wages; and

(b) any other benefit or emolument for the performance of work or services, including benefits of a material kind,

and, in particular, includes—

(c) payments in respect of overtime, travelling time, shift-work, night-work, and special duty;

(d) payments in respect of work on Saturdays, Sundays, and holidays and other times outside ordinary hours of employment; and

(e) payments by way of annual leave loading;

“ remuneration-fixing authority ” means—

- (a) any tribunal, authority, body, or person which has power, with or without the approval of another authority, body, or person to make an award, determination, decision, order, regulation, or contract, or to make or certify an industrial agreement, that determines or fixes remuneration; or
- (b) any tribunal, authority, body, or person (other than a court of law) which has power to hear and determine an appeal, or to arbitrate an application in respect of an award, determination, decision, or order referred to in paragraph (a);

“ State authority ” means a body or authority, whether incorporated or not, which is established or constituted by or under an Act or under the royal prerogative, being a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister, or another State authority.

“ State employee ” means any person who, whether on a full-time or a part-time basis, and whether in a permanent capacity or otherwise, is employed by a State employer;

“ State employer ” means the Governor, a Minister, or any other person acting on behalf of this State, or a State authority.

(2) For the purposes of this Act, a class of persons may be constituted by an individual person.

4—This Act, and an order in force under this Act, have effect notwithstanding anything in—

- (a) any other law of Tasmania;
- (b) any award, determination, decision, or industrial agreement having effect in relation to any State employee.
- (c) any contract of service or apprenticeship having effect in relation to any State employee.

5—This Act binds the Crown in right of Tasmania.

Act to bind
Crown.

Power of Governor to make orders for purposes of this Act.

6—(1) The Governor may, from time to time, make orders-in-council for the purposes of this Act.

(2) An order under subsection (1) may be declared to apply to and in relation to—

(a) State employees generally; or

(b) a class of State employees specified in the order,

and, where such an order is declared to apply to and in relation to any such employees, it shall be binding on those employees.

(3) Where an order under subsection (1) applies to and in relation to any State employees, the order shall, unless it otherwise provides, also apply to and in relation to and be binding on—

(a) the State employer or State employers of those employees; and

(b) any remuneration-fixing authority which would, apart from this Act, be empowered to exercise its functions with respect to those employees.

(4) Subject to this section and section 8, an order under subsection (1) may—

(a) direct that a remuneration-fixing authority shall not, during the period for which the order is in force, exercise its functions in respect of the State employees to which the order applies so as to—

(i) increase the rates, or the minimum rates, of any remuneration, or grant a new benefit in the nature of remuneration, payable to those employees;

(ii) reduce the ordinary hours of work of those employees, or the period to be worked by those employees before they become entitled to be paid overtime rates of remuneration; or

(iii) increase the rate, or the minimum rate, of any prescribed allowance payable to those employees, or grant or approve the grant of any new prescribed allowance to those employees; or

(b) where a code is in force under section 9 and is applicable to any State employees, direct that a remuneration-fixing authority shall not, during that period, exercise its functions in respect of those employees in relation to—

- (i) any increase or proposed increase in the rates, or the minimum rates, of any remuneration, or the granting of any new benefit in the nature of remuneration payable to those employees;
- (ii) any reduction or proposed reduction in the ordinary hours of work of those employees, or in the period to be worked by those employees before they become entitled to be paid overtime rates of remuneration; or
- (iii) any increase in the rate, or the minimum rate, of any prescribed allowance payable to those employees, or the granting or approving the grant of any new prescribed allowance to those employees,

except in accordance with the provisions of that code.

(5) An order under subsection (1) may include such ancillary provisions with respect to the remuneration of State employees to whom the order applies, the hours of work of those employees, and prescribed allowances payable to those employees as the Governor considers necessary for giving effect to the objects of this Act and, without limiting the generality of the foregoing, may provide that, during the period for which the order is in force, any provision of an Act relating to any of those matters, whether passed before or after the commencement day, or any provision having effect under any such Act and relating to any of those matters, shall be construed subject to such exceptions, modifications, or adaptations as may be specified in the order.

(6) It is the duty of a remuneration-fixing authority to comply with a direction contained in an order under subsection (1) and, where a remuneration-fixing authority has refused or failed, is refusing or failing, or is proposing to refuse or fail to comply with such a direction, or with a provision of a code contained in an order in force under section 9, the Supreme Court may, on the application of the Minister or a person authorized by the Minister, make an order requiring the remuneration-fixing authority to comply with the direction or provision.

(7) An order under subsection (1) shall not prevent or be construed as preventing—

- (a) a change in the classification of an office, position, or appointment; or
- (b) an increase in the remuneration of a particular person in accordance with an award, determination, decision, order, or regulation, in force immediately before the day on which the order comes into force, being an increase—
 - (i) by way of a higher duties allowance, an extra duties allowance, or a proficiency allowance;
 - (ii) by reason of an incremental advancement within a specified scale of remuneration; or
 - (iii) by reason of the promotion or transfer of the person to another office or position.

(8) An order under subsection (1) shall not preclude or be construed as precluding a remuneration-fixing authority from reducing the ordinary hours of work of any State employees, or the period to be worked by any State employees before they become entitled to be paid overtime rates of remuneration, if by such action the effective rate of remuneration of those employees, calculated on an hourly basis, would not thereby be increased.

(9) An order under subsection (1) shall not prevent or be construed as preventing—

- (a) a remuneration-fixing authority from doing any act or thing during the period for which the order is in force for the purpose of giving effect to a contract entered into, or a decision made, before the beginning of that period, being a contract or decision to—
 - (i) increase the rates, or the minimum rates, of any remuneration, or grant or approve the granting of a new benefit in the nature of remuneration, payable to employees to whom the order applies;
 - (ii) reduce the ordinary hours of work of those employees, or the period to be worked by those employees before they become entitled to be paid at overtime rates or remuneration; or

(iii) increase the rate, or the minimum rate, of any prescribed allowance payable to those employees, or grant or approve the granting of any new prescribed allowance to those employees; or

(b) a remuneration-fixing authority from doing any act or thing during the period for which the order is in force in connection with the hearing and determination of any appeal lodged, or arbitrating any application made, before the beginning of that period in respect of an award, determination, decision, or order made by another remuneration-fixing authority in relation to a matter specified in paragraph (a) (i), (ii), or (iii).

(10) Section 47 of the *Acts Interpretation Act* 1931 shall apply to and in relation to an order under subsection (1) as if the order were a regulation and shall so apply to the exclusion of section 38A of that Act.

(11) In this section, a reference to the functions of a remuneration-fixing authority is a reference to the functions of making or varying any award, determination, decision, order, regulation, or contract of employment or of certifying any industrial agreement or variation of an industrial agreement.

7—(1) Subject to this section and section 8, an order under section 6 may direct that any State employer to whom, or the State employers of a class to which, the order applies—

Power to extend orders under section 6 so as to apply to employers.

(a) shall not, during the period for which the order is in force—

(i) pay remuneration to any State employees (being employees to whom the order also applies) in excess of the rate that is applicable to those employees immediately before the beginning of that period;

(ii) grant to his State employees (being employees to whom the order also applies) a new benefit in the nature of remuneration;

- (iii) vary the ordinary hours of work of his State employees (being employees to whom the order also applies) to a number of hours, or the period to be worked by those employees before they become entitled to be paid overtime rates of remuneration to a period, that is less than the number of ordinary hours or, as the case may be, that is less than the period applicable to those employees immediately before the beginning of that period;
 - (iv) pay a prescribed allowance to his State employees (being employees to whom the order also applies) in excess of the rate that is applicable to them immediately before the beginning of that period; or
 - (v) grant to his State employees (being employees to whom the order also applies) a new prescribed allowance; or
- (b) where the order contains a direction of a kind referred to in section 6 (4) (b), shall not, during that period, do any of the things referred to in paragraph (a) of this subsection except in accordance with the provisions of the order.

(2) For the purposes of subsection (1), an order under section 6 may provide that the rate of remuneration, the ordinary hours of work or the period to be worked before becoming entitled to be paid overtime rates of remuneration, or, as the case may be, the rate of a prescribed allowance applicable to a person who becomes a State employee of a State employer to whom the order applies during the period for which the order is in force (being an order which is applicable to him) shall be deemed to be the rate, number of hours, or period which, having regard to the work or services which that person is required to perform, would or might reasonably be expected to have been applicable to him if he had been a State employee of that employer immediately before the beginning of that period.

(3) An order under section 6 shall not preclude or be construed as precluding a State employer from reducing the ordinary hours of work of any of his State employees, or the period to be worked by any such employees before they become entitled to be paid overtime rates of pay, if by such action the effective rate of remuneration of those employees, calculated on an hourly basis, would not thereby be increased.

(4) An order under section 6 shall not prevent or be construed as preventing a State employer to whom the order applies from giving effect to any award, determination, decision, or order, or any variation of an award, determination, decision, or order, made, or any industrial agreement or variation of an industrial agreement certified, by a remuneration-fixing authority before the order came into force.

(5) Where a person pays an amount to a State employee in contravention of an order under section 6, that amount is recoverable from that person as a debt due to the Crown.

8—The terms of any contract which was entered into by a State employer and a State employee before the date on which an order under section 6 comes into force in relation to that employer and that employee (being a contract which governs the rate of remuneration of that employee, the ordinary hours of work of that employee, the period to be worked before that employee becomes entitled to receive pay at overtime rates of remuneration, or the rate at which any prescribed allowance is payable to that employee) shall, for the period during which the order is in force, be modified by and in accordance with the provisions of that order.

Application of orders under section 6 to existing contracts of employment, &c.

9—(1) The designated Minister may require the Public Service Board or the Chairman of Industrial Boards, as the case may be, to prepare a code for the purpose of giving effect to an order or proposed order under section 6, and may from time to time require modifications of such a code.

Power of designated Minister to prepare code for guidance of remuneration-fixing authority.

(2) A code prepared under subsection (1) may include practical guidance to be followed by remuneration-fixing authorities when exercising their functions.

(3) A code, or a modification of a code, prepared under subsection (1) shall, if approved by the Minister, be implemented by order-in-council.

(4) Where an order is in force under this section, it is the duty of every remuneration-fixing authority to which the code contained in the order applies to have regard to that code when exercising its functions.

(5) An order under this section may provide for different parts of a code prepared under subsection (1) to take effect on different days.

(6) Section 47 of the *Acts Interpretation Act* 1931 applies to and in relation to an order made under this section as if it were a regulation.

(7) The Governor may, by notice published in the *Gazette*, designate a Minister of the Crown for the purposes of this section and may, by a similar notice, revoke such a designation.

(8) A reference in this section to the functions of a remuneration-fixing authority is a reference to those functions specified in section 6 (11).

Offences
generally.

10—(1) Where an offence under this Act committed by a corporation is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the corporation or any person who was purporting to act in any such capacity, he as well as the corporation shall be guilty of the offence and shall be liable to be proceeded against and dealt with accordingly.

(2) Proceedings for an offence under this Act shall not be instituted except by, or with the consent of, the Attorney-General.

(3) For the purposes of this section, “ officer ” includes a member of the governing board of a corporation.

Expiry of
Act.

11—The provisions of this Act shall expire at the conclusion of the 30th June 1983 or at the conclusion of such earlier day as may be fixed by proclamation.